

TOWN OF WASHINGTON
Bryan Memorial Town Hall
Post Office Box 383
Washington Depot, Connecticut 06794
Zoning Commission Regular Meeting

MINUTES

February 22, 2021

7:30 P.M. – Meeting Via Zoom Conference

MEMBERS PRESENT: Chairman Solley, Mr. Reich, Ms. Hill, Ms. Radosevich, Mr. Werkhoven

ALTERNATES PRESENT: Ms. Smith, Ms. Fernandez-O'Toole, Mr. Sivick (vacated due to snow removal)

STAFF PRESENT: Attorney Zizka, Ms. White, Ms. Rill, Mr. Tsacoyannis

PUBLIC PRESENT: J. Averill, M. Showalter, R. Owens, R. Parker, T. Zorn, J. Lodsine, R. Solomon, J. Brinton, K. Kehoe, C. Matteo, L. Van Tartwijk, D. Sherr, E. Johnson, S. Kessler, D. Arturi, B. Holk, S. Cornell, M. Gorra, P. Szymanski, H. Barnet, L. Reynolds (Republican American Staff), C. Bensley, Other Members of the Public

Chairman Solley called the Meeting to order at 7:39pm.

PUBLIC HEARING(S) (05sec.):

Request of 34 & 46 Potash Hill Road, LLC, 34 Potash Hill Road, for a Special Permit from Section 13.11.2 – Accessory Apartment – Attached – for an Accessory Apartment in an attached garage:

Chairman Solley, Ms. Hill, Mr. Reich, Mr. Werkhoven and Ms. Radosevich were seated for this Public Hearing.

Mr. Johnson of West Mountain Builders representing the Applicant stated that his clients would like to add an accessory apartment over an existing garage. The Applicant has received Health Approval, there would be no change of outer appearance of the current garage, there would be efficient parking, as well as a full kitchen and bath.

Ms. Hill questioned if the garage would be considered Attached in accordance with the Washington Zoning Regulations which states that an Attached Accessory Apartment should be connected by a common wall of the dwelling. Mr. Johnson explained that there was a non-heated mudroom connecting the house and garage, that the foundations were contiguous, the buildings touch each other and use the same mechanical systems. Chairman Solley pointed out that there was a small gable intersecting the gambrel roof between the house and garage, and asked Mr. Johnson if this was the mudroom he was referring and Mr. Johnson confirmed.

With no comments from the Public, Chairman Solley requested a Motion to close the Public Hearing.

MOTION: To close the Public Hearing for the Request of 34 & 46 Potash Hill Road, LLC, 34 Potash Hill Road, for a Special Permit under Section 13.11.2 – Accessory Apartment – Attached – for an Accessory Apartment in an attached garage, by Mr. Reich, seconded by Mr. Werkhoven, passed 5-0 vote.

REGULAR MEETING (08min 28sec.):

Chairman Solley, Ms. Hill, Mr. Reaich, Mr. Werkhoven and Ms. Radosevich were seated.

CONSIDERATION OF THE MINUTES (08min 35sec.):

Ms. Hill wished to make the following correction to the January 25, 2021 Meeting Minutes; page 3, paragraph 8:

“Mr. Werkhoven asked the Commission to recall if there had been an event they had denied or prohibited. Ms. Hill stated that there had only been one several years ago, and that was for the Wykeham Inn”.

Ms. Hill corrected that this was for a Commercial application, not an “event” that had been denied.

Ms. Radosevich wished to make the following correction to the February 8, 2021 Meeting Minutes; page 4:

“Ms. Radosevich stated that she was also against increasing the number of days from two to three”.

Ms. Radosevich felt this should say, “from two events to three events”.

MOTION: To approve the January 12, 2021, January 25, 2021 and February 8, 2021 Meeting Minutes, as amended, by Ms. Radosevich, seconded by Mr. Werkhoven, passed 4-0 vote.

PENDING APPLICATIONS (12min. 53sec.):

Request of 34 & 46 Potash Hill Road, LLC, 34 Potash Hill Road, for a Special Permit from Section 13.11.2 – Accessory Apartment – Attached – for an Accessory Apartment in an attached garage:

MOTION: To approve the Request of 34 & 46 Potash Hill Road, LLC, 34 Potash Hill Road, for a Special Permit under Section 13.11.2 – Accessory Apartment – Attached – for an Accessory Apartment in an attached garage, by Chairman Solley, seconded by Ms. Hill, passed 5-0 vote.

NEW APPLICATIONS (14min. 15sec.):

Request of Arthur H. Howland & Associates for Bramson, 280 Nettleton Hollow Rd, for a Special Permit under Section 17.9 – Replacement of a Nonconforming Structure- rebuild accessory structure as receiving barn:

Mr. Szymanski of Arthur H. Howland and Associates will be representing the Applicant.

Chairman Solley questioned why the Applicant was returning to the Commission after a previous withdrawal.

Mr. Szymanski explained that at the prior meeting, the Commission stated that there needed to be a principle structure on the property, so his client has gained approval from the Inland Wetlands Commission for a driveway, septic system and principle residence.

Chairman Solley stated that the structure in question had received a Variance a number of years ago with the very specific use of a garage. Chairman Solley explained that he did not feel that the Zoning Commission could accept an application for a different structure until another Variance was granted. Mr. Szymanski stated that in 1991, when the Variance was granted, a garage was not considered a “use” in the Washington Zoning Regulations, but an Accessory building. The original Variance was granted for a setback, not the use itself. Chairman Solley argued that the use of the building at that time was a garage, therefore the Variance would be implemented for the garage.

Ms. Hill stated that she was concerned with a permit being issued for an accessory structure when there was not a primary structure built on the property as of yet. She felt that the primary structure construction should begin prior to an application submission for an accessory structure. Ms. Radosevich agreed.

Mr. Szymanski questioned if whether or not he would be allowed to renovate what is currently considered a garage by updating doors and windows and reducing the volume and adding a half bath, without a primary structure on the property. Ms. Hill explained that this is a self-created hardship that it is now considered a non-conforming building, adding that when the primary building was demolished, a second non-conformity was added to that accessory building. She suggested that the Commission consult with Attorney Zizka prior to next month’s meeting.

Request of Reese Owens Architects for Chiquet & Beasley, 402 Nettleton Hollow Rd for a Special Permit under Section 13.11.2 – Accessory Apartment Detached – reclassify existing structure as accessory conditioned upon issuance of Zoning Permit for new principal dwelling:

Ms. White explained that there is a current 1,000 square foot single-family structure on the property that the property owners would like to reside in while a new home is constructed on the property. When the new home is complete, the property owners would like the current home to be permitted as a detached accessory dwelling.

Mr. Werkhoven questioned why this applicant was allowed to submit an application prior to the pouring of a foundation for the residence, and the prior applicant was not.

Mr. Owens, representing the property owners, explained that there was currently a primary dwelling on the property with a foundation that was approximately 1,000 square feet, which is above

the minimum requirement for a house and below the required footage for a detached accessory apartment. He stated that he could not build a house on this lot unless he obtains a conditional reclassification of the cottage to an attached accessory apartment. Ms. Hill added that the existing is considered conforming as well.

MOTION: To schedule the Public Hearing for the Request of Reese Owens Architects for Chiquet & Beasley, 402 Nettleton Hollow Rd for a Special Permit under Section 13.11.2 – Accessory Apartment Detached – reclassify existing structure as accessory conditioned upon issuance of Zoning Permit for new principal dwelling. The Public Hearing will be held on Monday, March 22, 2021 at 7:30pm via Zoom Video Conference. Motion made by Chairman Solley, seconded by Ms. Hill, passed 5-0 vote.

OTHER BUSINESS (44min. 10sec.):

Deliberation of Revisions to Washington Zoning Regulation Section – 12.8 – Temporary Uses:

Ms. Radosevich stated that she had requested that there be a discussion regarding helipads and heliports and asked Chairman Solley if he would like to have that discussion prior to the deliberations regarding 12.8. Chairman Solley stated that he felt that this would be a more appropriate topic under “Enforcement”. Briefly, Chairman Solley stated that because a helipad and/or heliport was not a permitted use in a residential district, therefore it was not allowed.

Mr. Cain asked if he could speak. Chairman Solley explained that he did not want to get into a lengthy discussion regarding this at this time, but allowed Mr. Cain to discuss the subject briefly. Mr. Cain explained that the property at 96 Romford Road was currently being sold and was listed as including a heliport, with the implication that helicopters could frequently fly in and out of the property. He was concerned that if the property was sold that the new owners would be allowed to do so by right. He felt that the Enforcement Officer should contact the current owner and/or the Real Estate agent for the property and inform them that a heliport was not allowed. Chairman Solley stated that this could be done. Mr. Cain explained that he had contacted the agent and had received a response from the property owner stating that the heliport was “grandfathered in”. The Commission agreed that this was not the case. Mr. Reich stated that he felt that this discussion should take place later, explaining that there were numerous people in attendance that were waiting for the discussion of 12.8 – Temporary Uses. Chairman Solley agreed.

(51min. 40sec.) -

Chairman Solley asked the Commission if they had received the final version of the Regulation. Chairman Solley read the version aloud:

“12.8 Temporary Structures and Uses. Temporary permits may be issued for certain structures and uses in accordance with the following provisions:

12.8.1 Temporary Construction Structures: When a lot is being prepared for the construction of a permitted permanent structure or the establishment of a permitted permanent use, a permit may be issued for one or more temporary structures to be used solely for (a) storage of equipment and materials required for such preparation or construction, or (b) a construction office. The Zoning Enforcement Officer may issue a temporary permit for up to two such structures provided the structures would meet all setback requirements for a permanent structure. The duration of the first such permit shall be no greater than one year, or two weeks after the completion of preparation or construction of the permanent use or structure, whichever comes first. Permits may be renewed for periods of no more than six months.

12.8.2 Temporary Trailers for Living Purposes: A permit, not to exceed four weeks in any calendar year, may be issued by the Zoning Enforcement Officer for one visiting trailer to be used for living purposes on a lot zoned for residential use. Any such trailer must be parked on the rear half of the lot and must be located at least 25 feet away from every lot line. No more than one such permit shall be issued in any calendar year.

12.8.3 Temporary Uses Requiring No Permit:

A. All temporary uses that are incidental and customary to the permitted principal use of a parcel.

B. Recurring events that have previously not been issued a zoning permit, but that have been open to the public and have been held at the same location for a period of five years or more before [insert date of amendment].

C. Temporary events on property principally used for Town, Religious, or School purposes.

12.8.4 Temporary Uses Requiring a Zoning Permit:

The Zoning Enforcement Officer may issue a zoning permit for a single-day event not listed in Subsection 12.8.3. above, provided the applicant demonstrates that adequate

parking can be provided. No more than two (2) such permits shall be issued in any one calendar year for the same site.

All such uses/events shall require a zoning permit and shall be limited to the hours of 8:00 am to 10:00 pm.

12.8.5 Temporary Uses Requiring a Special Permit:

A Special Permit shall be required for any temporary use not described in sections 12.8.3 and 12.8.4. Such uses shall be subject to the standards of Section 13.1.C of these regulations and shall be limited to circuses, carnivals, festivals, concerts, artistic performances, galas and similar type entertainment.

No more than one (1) Special Permit may be issued in any one calendar year for a temporary use on any lot or parcel. No such temporary use shall be permitted for more than seven days within a consecutive period of ten days.

The Commission reserves the right to limit the hours of any use permitted under this Section 12.8.5.”

Chairman Solley asked the Commissioners if there were any questions regarding what he had just read. There were none. He then requested that each Commissioner voice whether they are in favor of a vote this evening.

Mr. Werkhoven stated that he was fine going forth with a vote however, he felt disappointed that the Zoning Commission was being harshly criticized for something they took a lot of time and effort to simplify and make better. He pointed out that during the Public Hearing he had specifically asked for the Public to name an event that would be in jeopardy if these Revisions were passed and did not get a response.

Ms. Hill supplied the following statement:

“Statement regarding the proposed revisions to Section 12.8 read by Janet Hill at the February 22, 2021 Zoning meeting:

The proposed revisions correct deficiencies in the current Section 12.8 that the Commission’s attorney recommended be addressed.

The proposed revisions add clarity and specificity to the language, which in my opinion, makes this section less open to interpretation and more likely that even with future changes in Commission membership or to the land use staff, this section will be administered in a fair and consistent manner.

The proposed revisions clearly state all the types of temporary events, which do not now and will not in the future require zoning permits. This includes all events that are customary and incidental to the principal use of the property. Although this is technically a revision because it was never before written down, it is actually a continuation of the Commission's current policy. There is no change proposed here.

For those who were concerned the proposed revisions would shut down the Five Senses Festival, the proposed revisions add (I'll repeat that) add types of temporary events that will be permitted including artistic performances and festivals, which had not previously been listed as permitted. The proposed revisions also increase the time span for such a festival from seven consecutive days to seven days within a ten consecutive day period, making it possible for a festival to extend over two consecutive weekends.

Zoning can't spot zone, so multi day temporary events are possible throughout Town. Therefore, the final reason I support the proposed revisions is because they also add protections for residential neighborhoods.

1) Multi day temporary events will require a Special Permit approved by the Zoning Commission; they will no longer be approved by the zoning enforcement officer.

2) Only one multi day temporary event will be permitted per property per year.

3) Single day temporary events, which are not customary and incidental to the principal use of the property, will be limited to two per property per year. If this seems restrictive, keep in mind that probably more than 95% of single day temporary events are customary and incidental to the principal use of the property and don't even require a permit.

4) The proposed revisions specify time limitations for temporary events that are not customary and incidental to the principal use of the property.

For all of the above reasons, I will vote in favor of the proposed revisions."

Ms. Radosevich stated that she was in favor of voting this evening, and felt that the Revisions protect the existing events that are held in town as well as protecting residential property owners and their right to privacy.

Chairman Solley stated that this process had been long and arduous, however he commended the Commissioners as well as the townspeople for their input on the matter.

Mr. Reich stated that he is prepared to vote this evening. He commended the Commission for listening to and taking into consideration the Public's thoughts.

Attorney Zizka discussed the timing of publishing the Legal Notice and the effective date of the amendment, suggesting 16 days from this evening's meeting. This would make the effective date March 10, 2021.

MOTION: To approve the proposed amendments to Section 12.8 – Temporary Uses as circulated February 22, 2021 and titled "Proposed Amendments to Section 12.8 as of February 22, 2021" for the following reasons:

1. To resolve certain ambiguities in the existing Section and help to ensure that it will be administered in a fair and consistent manner;
2. To address several legal concerns about the manner in which the section is currently designed to be administered;
3. To expand the range of permitted temporary uses by allowing additional artistic and entertainment endeavors that are important to Washington's economic vitality; and
4. To protect the residential character of residential neighborhoods in accordance with page 23 of the Plan of Conservation and Development, which states, "Goal One: Stimulate economic development while maintaining rural character."

Motion made by Chairman Solley, seconded by Ms. Hill, and passed 5-0 vote.

ENFORCEMENT (1hr. 29min. 24sec.):

Mr. Tsacoyannis began by discussing 57 Flirtation Avenue, stating he was awaiting a lot line revision for the property that was contingent on an agreement with Eversource. Ms. Radosevich questioned if Mr. Tsacoyannis felt these delays were reasonable. Mr. Tsacoyannis explained that the property owner was doing his best to comply in a timely manner.

(1hr. 31min. 13sec.) - Ms. Hill questioned if Mr. Tsacoyannis discussed with Attorney Zizka on how to continue with enforcing the issue. Mr. Tsacoyannis stated that the town was aware of what its options were. Ms. Hill reiterated that at the previous Zoning Commission's Regular Meeting, the Commissioners had asked Mr. Tsacoyannis to consult with Attorney Zizka on how to continue, and questioned whether or not he had done so. Mr. Tsacoyannis stated that Attorney Zizka had been consulted in some aspects. Ms. Hill asked what Attorney Zizka had said when he consulted. Mr. Tsacoyannis said he would need to check his notes and get back to the Commission, but felt the property owners were making progress. Ms. Hill argued that there had not been any progress since the December Zoning meeting. Mr. Tsacoyannis stated that the property owners were aware of the schedule he had put in place, and felt they were doing their best to accomplish what was asked of them. He reminded the Commission that the property owner was being fined \$250.00 a day and it was in their best interest to do what is asked of them.

Ms. Radosevich stated that the Commission did not have proof that anything was being accomplished. Ms. Hill stated that she understood that this was a complicated matter, therefore she was requesting again that Mr. Tsacoyannis consult Attorney Zizka for his recommendation on how to proceed. Mr. Tsacoyannis stated that he would do so before next month's meeting.

Mr. Tsaooyannis went on to discuss 28 Tinker Hill Road, stating that this was more of an Inland Wetlands Commission Issue, but explained that there was work being done within the 100-foot and 50-foot boundary, and were fined for doing so. The property owner paid the fine.

Finally, Mr. Tsacoyannis stated that the Land Use Office had received two complaints, one on February 12th 2021, the second on February 15th, 2021, that there had been work being done at the property. After Mr. Tsacoyannis investigated further, he discovered that the work was actually being done at 23 Bell Hill Road, but had gained access via 101 Wykeham Road. However, an agreement made in 2013 prohibits use of the access road that was being used by the contractor.

Ms. Hill stated that she had driven past the property over the weekend and it looked as though brush had been removed from the access road, and it also seemed to be widened. She questioned why it had taken so long for Mr. Tsacoyannis to stop the work. Mr. Tsacoyannis stated that he had been to the property a few times but the workers were not on the premises. Ms. Hill pointed out that Mr. Tsacoyannis had not included the date of when he had contacted the property owner regarding the issue in his report. Mr. Tsacoyannis explained that he had reached out to the engineer.

Ms. Hill explained that the owner of 101 Wykeham had signed a settlement agreement in 2013 that stated that the driveway in question be completely abandoned, therefore it should not have been used in any way. Mr. Tsacoyannis stated that the agreement was based on development of the site, and that the activity taking place was not related to any development or demolition. Ms. Hill stated that the activity didn't matter, the agreement was that the driveway not be used. Ms. Hill asked whether or not Mr. Tsacoyannis consulted the file on this matter or if he had been in touch with Attorney Zizka regarding the matter. Mr. Tsacoyannis replied that he had not been in touch with Attorney Zizka, but had received an unsigned copy of the agreement and was going through the process of how to proceed. Ms. Hill asked what this process was. Mr. Tsacoyannis explained that he was responding to the complaint and investigating. Ms. Hill added that the Enforcement Report stated that the property owner of 23 Bell Hill Road would have to submit an after-the-fact application and possibly be fined, however the work had taken place at 101 Wykeham Road, so they would need to submit an application and be fined as well. Mr. Tsacoyannis stated that the activity had taken place at 23 Bell Hill Road. Ms. Hill stated that in the file for 101 Wykeham Road there are photos from 2013 that could be compared to the current state of the access road, showing that there had been work done to this access road/driveway that was supposed to be abandoned per the settlement agreement.

Mr. Werkhoven and Mr. Reich pointed out that it could be possible that the owner of 23 Bell Hill Road may have used the road without permission. Ms. Hill explained that Mr. Tsacoyannis had stated in his report that 101 Wykeham Road had given permission.

Ms. Hill stated that she would like a concrete plan on how to move forward with this issue. Chairman Solley stated that when Mr. Tsacoyannis contacts Attorney Zizka, he could advise how to proceed.

COMMUNICATIONS (1hr. 53sec. 35sec.):

There were no Communications this evening.

PRIVILEGE OF THE FLOOR (1hr. 53min 45sec.):

Ms. Hill asked if she could possibly draft a letter regarding Temporary Living arrangements for farms as well as including language that would allow the Country Club and the Washington Club to have events without needing permits for every single one.

Chairman Solley added that he was informed that the Town of Newtown has created regulations regarding farming activities and expanded agricultural uses that he would also like to look in to.

ADMINISTRATIVE BUSINESS (1hr. 56min 48sec.):

No Administrative Business this evening.

ADJOURNMENT (1hr. 56min. 50sec.):

MOTION: To adjourn the February 22, 2021 Washington Zoning Commission Meeting at 9:39pm, by Chairman Solley, seconded by Ms. Radosevich, passed 5-0 vote.

For the Audio of this Meeting, please click here:

https://townofwashington-my.sharepoint.com/:u:/g/personal/trill_washingtonct_org/Ea5ycXvif6VMoXpm8Q7-1Q0BqdwrxCyQrYlwGPzRJqk6BA?e=k6bl3b

Respectfully Submitted,

Tammy Rill

Land Use Clerk

March 1, 2021